

high as 7.4%. For that reason, 35 states have no community rating at all, and another six allow very wide variations.

The larger reality is that private insurance won't be less expensive until overall health-care costs go down. Democrats may be confused on this point because government, which paid nearly 47 cents of every medical dollar in 2007, simply sets lower prices when Congress feels like it. On average, doctors and hospitals are forced to accept 20% to 30% less for their services in Medicare. That's another reason insurers wouldn't meet a trigger's thresholds, given that providers shift costs onto private under-65 patients to make up government shortfalls.

Conceivably insurers could make their products more affordable by cracking down on treatments and refusing payment more often, much as HMOs held down spending in the 1990s. But both patients and doctors hated this "managed care"—and in any case, Democrats would find a new rationale for the public option in the inevitable voter outcry about private "rationing."

It's true that there was a trigger in the Medicare prescription drug benefit and the world didn't end. But recall the dynamics in 2003: The GOP decided that private stand-alone or Medicare Advantage plans should manage the benefit. As a concession to Democrats, they agreed to trigger a "public option" for drugs—in which the government would have bought them directly, with its typical "negotiating" tactics—if seniors didn't have more than two plans in a given region.

Today, there are 1,689 stand-alone and 2,099 Advantage plans, and on average seniors have 50 to choose from—and costs in 2007 were \$26 billion lower than expected. For all its problems, the Medicare drug plan created more choice for seniors and more competition among providers to offer packages that they found most attractive, holding down costs. In short, it created the incentives for multiple "private options."

ObamaCare doesn't bother with incentives, instead merely increasing government command and control of private insurance while making it more expensive in the process. That's why a trigger will inevitably lead to the public option, and also why ObamaCare will make all of our current health problems worse.

Mr. MCCAIN. So, Mr. President, let me summarize. I come back from this recess—and I see my colleague also from Arizona in the Chamber—both of us come back, as a lot of my colleagues do, in the face of extreme unease, anger, and frustration on the part of the American people, not just over the issue of health care but over the issue, as I pointed out, of this massive spending and debt and deficit we have laid on future generations of Americans.

They want us to act in their interests. So wouldn't it be appropriate for the President, tomorrow night, if I may be so bold, to say: My friends and colleagues, the citizens have spoken. They want us to sit down together, and they want us to do what is doable. They want us to fix this cost escalation of health care in America, which is making it less and less affordable to all Americans. But the message we have gotten is, they are very skeptical about "government-run health care" or a "government option."

When the President says: If you like your health insurance policy, you can keep it, that is not true either. It is not

true either. Because if you had a government option, and it looked more attractive to your employer, and your employer decided to select the government option rather than the health insurance policy you now have, then you cannot keep it. So it is simply not true that under the government option, if you like your health insurance policy, you can keep it.

But the real point is, why don't we sit down—which we did not do; we did not do that at the beginning of this process—why don't we sit down with the smartest people on both sides of the aisle and say: OK, what can we get done? What can we get done here together and go to the American people and say we are going to make significant progress in eliminating this problem of out-of-control costs in health care in America.

I recall when I first came to the Congress of the United States—and it was pretty partisan then—Ronald Reagan had only been elected a couple years before that time, and Social Security was about to go broke. Social Security was going broke, and two old Irishmen—Tip O'Neill, a liberal Democrat from Massachusetts, and the conservative from California—sat down together and said: OK, we are going to sit together. We are going to fix Social Security. And they did. There American people were not only proud and grateful but they benefited.

Let's go back to square one. Let's sit down together and get this issue resolved.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Republican whip is recognized.

ORDER OF PROCEDURE

Mr. KYL. Mr. President, I ask unanimous consent to speak in morning business for not to exceed 15 minutes.

Mr. DORGAN. Mr. President, will the Senator yield for a unanimous consent request?

Mr. KYL. Yes.

Mr. DORGAN. Mr. President, I would make a request that Senator WHITEHOUSE be recognized following the presentation by the Senator from Arizona, that I be recognized following Senator WHITEHOUSE, and Senator INHOFE be recognized following my presentation.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. KYL. Thank you, Mr. President. I thank my colleague.

REMEMBERING SENATOR EDWARD KENNEDY

Mr. KYL. Mr. President, I want to speak to the same issue my colleague Senator MCCAIN spoke to in a couple minutes. But first I wish to make some brief comments about two of our colleagues who will no longer be with us—of course, our friend and colleague, Senator KENNEDY, and Senator MARTINEZ.

Let me, first of all, speak to Senator KENNEDY's departure from this body due to his untimely death.

During his five decades of public service, Senator KENNEDY served with diligence, tireless passion, and, of course, vigor—the word that immediately evokes the Kennedy spirit.

Because of who he was, he could have gotten by without a lot of hard work. But that was not his way. He believed deeply, so he worked hard—as hard as any Senator I have known.

One thing that has been commented on by many who worked with Senator KENNEDY was his willingness to compromise. I have characterized Senator KENNEDY as a legislator's legislator, often a results-oriented pragmatist, who knew that clashes between the two parties are inevitable and, in fact, an integral part of our political system, and that it was important to reach across the aisle if you wanted to get things done. He believed that people with dramatically different points of view could usually find some common ground.

While Senator KENNEDY and I did not share a perspective on very many issues, and he was always ready to make an ideological or political point, my colleagues and I appreciated his efforts to actually legislate as well. His dedication, his hard work, humor, and high spirit will always be remembered. My wife Caryll and I extend our thoughts and prayers to his family.

TRIBUTE TO SENATOR MEL MARTINEZ

Mr. KYL. Mr. President, I also want to say a couple words about our colleague MEL MARTINEZ from Florida who will be leaving the Senate on this coming Thursday. He has been an admirable public servant, both in this body and as Secretary of Housing and Urban Development. To each position he brought his considerable talent and devoted himself to solving problems in a practical, thoughtful, and bipartisan way.

Senator MARTINEZ never sought the limelight; he simply wanted to make a difference. He was disappointed, I know, that he was unable to move immigration reform forward. But we will try to apply what he has taught us about that issue. His positive influence here in Washington will be greatly missed.

A farewell to Senator MARTINEZ would not be complete without a note about his compelling life story and about his wife Kitty. As a Cuban emigre who came to America with few ties, Senator MARTINEZ represents one of the most inspiring aspects of American life: that talent and hard work unlock the door to great success. He has not forgotten those who helped him, just as all of us will not forget him. His wife Kitty has, likewise, made many friends in Washington and will also be missed.

Although I know he will not need it, I wish him all the best in his future endeavors, and I know he will remain an

important voice in our party and on issues important to all Americans.

HEALTH CARE

Mr. KYL. Mr. President, my colleague, Senator McCAIN, has spoken to the issue that is on the minds of all Americans today and which the Senate and House of Representatives will again take up as we return from the August recess; that is, how to deal with the issues that confront us in the delivery of health care today without doing damage to the care and the coverage that most Americans have and believe serves them well.

The approach I heard from my constituents over the recess was very similar to what Senator McCAIN has spoken about, which should not seem to be a big coincidence since we represent the same State. On one occasion we called about 50,000 Arizonans, had them on the telephone for about an hour and a half, and asked for their views, and gave our thoughts in response to their questions.

What I have been struck by is the consistency of the views that have been expressed in the various forums I had around the State, consistent with the townhall meetings Senator McCAIN had right in the heart of the Phoenix metropolitan area, views people expressed to me in every location, from the doctor's office I went to, to people meeting with me in my office, to folks at church. The message seems to be pretty much the same. And I think Senator McCAIN articulated it well when he characterized it as anxiety and concern.

One of my colleagues said he denoted in his constituents, in these townhall meetings, real fear. I think that is true. Because even though we know there are some things that need to be done to improve health care delivery in this country, most people, according to surveys, have insurance and believe what they have serves them very well or at least well. Our goal, therefore, is to try to solve the specific problems that exist without doing harm to the system that treats the others.

As I said, a lot of our constituents were very fearful that they were going to have to pay much more in taxes; that their debt burden as a part of what this entire country owes would be increased significantly because of the costs of the health care reforms that have been proposed; that they wouldn't be able to keep the insurance they have even if they like it; that the way they receive care—the advice they get from their doctor about what their family's needs are—would not necessarily be respected if the government has a large role in deciding what to pay for and what not to pay for; and generally that the government's continued takeover piece by piece of the American economy would not serve individual Americans well. To be sure, they agreed that some health care costs are growing too fast and need to be controlled and that

there are some Americans who don't have health coverage and really don't have a way to get it without public health. Those are the two key areas in which they recognize there is a role for government to play in reform.

But they also wonder why certain problems are not being tackled—the problem, for example, of what one characterized as “jackpot justice,” where trial lawyers bring lawsuits and sometimes get big rewards but frequently simply settle the cases, and the net result is that the medical profession in this country—doctors primarily but hospitals and others—spend an enormous amount of money, estimated to be at least \$100 billion a year, on what is called the practice of defensive medicine; that is to say, doing things—ordering tests, referring patients to other physicians and so on—all of which are really unnecessary for the care and treatment of the patient but which will protect the doctor in the event there is a claim of medical malpractice. This happens because the lawyers involved get so-called expert witnesses who come to court and tell the jury that the standard of care in the community is that if the child falls down on the playground and gets a bump on the head, you order a CAT scan. It doesn't matter whether or not from the physician's observations he can see that the child really, if the parents just watch him carefully that evening, should be just fine; no, to protect himself or herself against medical liability or malpractice claims, they order a CAT scan or some other kind of test. The net result of that, as I said, is an expense of over \$100 billion a year in unnecessary medical tests and procedures. The cost of those items, of course, is passed on to all the rest of us.

Another estimate is that 10 percent of every health care dollar is spent on the premiums physicians spend for their malpractice insurance. As lawyers, some of us know you have to pay some money for malpractice insurance before you can start work on January 1. That is fair. But how about \$200,000 in medical malpractice premiums for a neurosurgeon, for example. That is an awful lot of money if you are an OB-GYN, for example. This estimate of 10 percent of health care dollars spent on premiums means that if we could reduce the incidence of malpractice claims, we could reduce that premium cost, the physicians wouldn't have to pass it on to the insurance companies, who wouldn't have to pass it on to us, and again, our health care could be cheaper.

So because of premium costs and because of the practice of defensive medicine, this jackpot justice system has not served us well.

One would think that if we are interested in controlling costs, if we are making insurance more affordable for small businesses—for big businesses, for that matter—for their employees, and for us as individuals, and if we

want to encourage more physicians to stay in practice, then what we would do is tackle this problem. Is there one word about medical malpractice reform in any of the bills, the bill that came out of the HELP Committee in the Senate, the bill currently pending in the Finance Committee, or the bill that came out of the House of Representatives? The answer is no, not a word about medical malpractice reform. Why? Well, Howard Dean, the former Democratic Governor of Vermont and Democratic National Committee chairman, was very honest about this on August 17 at a townhall meeting with Representative MORAN in Virginia. He was asked that question, and he said: When you write a big bill, you don't want to take on too many special interests, and the people who wrote this bill simply didn't want to take on the trial lawyers, and, he said, that is the truth. It is the truth.

The reality is that the President is going to ask everybody else to sacrifice. For example, seniors are going to have to take a \$400 billion to \$500 billion cut in Medicare, which will mean less care for them. If small businesses are going to have to pay a tax on every one of their employees in order to make sure they get covered with insurance; if the pharmaceutical companies are going to have to pony up—I have forgotten how many hundreds of billions of dollars it was for more drugs for seniors, for example; if everybody else is going to have to sacrifice, why didn't we ask the poor trial lawyers to give up just a little bit here? We are not saying malpractice claims couldn't be filed. That is the way doctors and hospitals and others are kept honest. When you make a mistake, you are going to have to pay for it. But we can make sure the system works to prevent the kind of jackpot justice I spoke about.

There are at least five different kinds of medical malpractice reforms that have worked. One was offered by Senator ENZI in the HELP Committee; it is called health courts. The State of Texas and the State of Arizona have both adopted certain kinds of medical malpractice reforms. In Arizona, it has begun to work. In Texas, something like 7,000 doctors have moved into the State, with premiums being reduced by either 21 or 23 percent. In other words, medical malpractice costs can be reduced to provide care, and by reducing that cost, people's premiums can be cut, and that will make insurance more affordable and more people will be able to get it.

My point here is simply to say this: What we found as we talked to our constituents was a fear that in order to solve two or three very discrete problems, there were people here in Washington who wanted to remake the whole system, throw out what we have, and impose on it a new regulatory regime. Whether there is a government option or government insurance plan is only part of the issue. The problem is